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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of :
: CC Docket No. 96-128
Implementation of the :
Pay Telephone Reclassification :
and Compensation Provisions of :
the Telecommunication Act of 1996 : DOCKET FILE COPY ORIGINAL

COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PaPUC) is the state agency responsible for regulating all public utilities, including telephone companies, within the Commonwealth of Pennsylvania. As such, it has a significant interest in the regulation of telecommunication services at both the interstate and intrastate levels. In pursuit of that interest, the PaPUC offers the following comments in response to the Notice of Proposed Rulemaking to Implement Provisions of the Telecommunications Act of 1996.

I. INTRODUCTION

The Telecommunications Act of 1996 (1996 Act) directs the Federal Communications Commission (FCC) to promulgate new regulations which govern the payphone industry and, inter alia, ensure that all payphone owners are compensated for calls originated on their payphones and discontinue subsidies for payphones owned by local exchange carriers (LECs). 47 U.S.C. §276. Historically, payphone service has been regulated at the state

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level as part of the LEC's basic service, e.g., setting rates for local payphone usage. The FCC has focused on payphones primarily in its regulation of carriers that provide operator-assisted long-distance service, known as operator service providers (OSPs), and in its implementation of the Telephone Operator Consumer Services Improvement Act (TOCSIA).¹ Congress enacted the TOCSIA which required all OSPs to provide identification to consumers and a quotation of their rates upon request. TOCSIA also required aggregators² to unblock access to other carriers and post certain disclosures on or near each telephone.

A private payphone owner (PPO) generally presubscribes its payphone to an interexchange carrier (IXC) of its own choice. That IXC provides operator services to the PPO for collect calls and calls billed to a calling card or a third party. The IXC pays a percentage of its revenues from the payphone to the PPO. The PPO, in turn, pays a commission to the location providers based on the revenues generated by the payphone.

Section 276(b)(1)(A) of the 1996 Act directs the FCC to establish a compensation mechanism to ensure "that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call" from their payphones. Section 276(b)(1)(B) orders the FCC to "discontinue the intrastate

¹ Codified at 47 U.S.C. §226.

² An "aggregator" is any entity that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services. 47 U.S.C. §226(a)(2).

and interstate carrier access charge payphone service elements and payments . . . and all intrastate and interstate subsidies from basic exchange and exchange access revenues." In addition, Section 276(b)(1)(D) directs the Commission to consider whether Bell operating companies (BOCs) should be permitted to be involved with the location provider's selection of the payphone's presubscribed carrier. These three provisions are intended to establish regulatory parity for all payphone service providers (PSPs).

II. EXECUTIVE SUMMARY

The PaPUC believes that the per-call compensation rate should be set at an amount that would encourage OSPs to lower their surcharges, but not be at such a level that the IXC recovery of its costs will unreasonably increase the price of the call to the end-user. Furthermore, the costs for originating the calls should be measured by appropriate cost-based surrogates which are reasonable and representative of the costs incurred by the PSP.

We agree with the FCC that the LECs' central office coin services should be made available to PPOs to create a level playing field and increase competition in the payphone industry. In addition, coin transmission services should be treated as a new service to prevent incumbent LECs from charging competitors unreasonably high prices for these services.

With respect to extending to the BOCs carrier-selection rights, the better approach to foster competition and create parity may be to withdraw from the payphone provider the right to select

the OSP serving their payphone. Potentially, by removing the coin telephone owner from the middle, the OSP may be given an incentive to lower its rates which, in turn, will mean lower rates for the caller or end-user.

Finally, Pennsylvania already has legislation and regulations in place to assure adequate coin telephone availability. Therefore, we would support deferring to the states to determine, pursuant to their own statutes and regulation, which payphones should be treated as "public interest payphones."

III. ISSUES

The PaPUC offers comments on the following issues in the following paragraphs:

Paragraph No. 16

The FCC in its Notice of Proposed Rulemaking explains how telephone calls are originated on payphones:

(1) coin calls; (2) directory assistance calls; (3) operator service ("0+" and "0-") calls; (4) access code calls (using e.g., "10XXX" codes and "1-800" or "950" carrier access numbers); and (5) subscriber 800 calls. Each of these categories can be further subdivided between local, intraLATA toll, intrastate interLATA, interstate interLATA and international.

Considering that the 1996 Act requires the Commission to ensure that all PSPs³ are fairly compensated for all calls originated by their payphones, the FCC first sought comment on what constitutes

³ This term refers to all payphone providers whether PPOs or LECs. 47 U.S.C. §276.

"fair" compensation and how the Commission should "ensure" that each PSP is compensated fairly for calls originated by its payphones.

The FCC considered a range of options to ensure fair compensation for PSPs. Also to be considered is the question of who pays the compensation which may include as possible payors: the caller using the payphone, the carrier over whose network the call is placed, or, in the case of subscriber 800 calls, the entity being called (who may or may not directly pass all the charges on to the caller using the payphone). The FCC tentatively concluded that a "carrier pays" compensation mechanism should be adopted where an IXC who receives a dial-around call would be required to pay a per-call charge to the provider of the payphone. Since the IXC could aggregate its payments to payphone providers among a large number of payphone callers, transaction costs for the caller could be minimized.

Although the rates for operator service calls for intrastate coin-paid toll services from competitive payphones are capped in Pennsylvania, as in most states, at the dominant carrier rate, the OSP usually charges a surcharge which may unreasonably increase the overall price of the call. While the PaPUC supports a per-call compensation rate at an amount that would encourage OSPs to lower their surcharge rate, the rate should not be at such a level that the IXC recovery of its costs will unreasonably increase the price of the call to the end-user.

However, we do agree with the FCC's conclusions that these costs for originating the calls should be measured by appropriate cost-based surrogates. The surrogates must be reasonable and representative of the cost incurred by the PSP for originating the call.

Paragraph No. 41

Furthermore, we also agree with the FCC that the LEC's central office coin services should be made available to PPOs to create a level playing field and increase competition in the payphone industry. Given that the 1996 Act directed the FCC to eliminate carrier access charge payphone service elements and payphone subsidies from access revenues in favor of a "per-call" compensation plan (See 47 U.S.C. §276(b)(1)(B)), the FCC concluded that LECs should be required to provide PSPs, on a tariffed basis, all functionalities used in a LEC's delivery of payphone services.

Paragraph No. 46

The FCC notes that the new services test places a cost-based upper boundary on new service prices to protect against unreasonably high rates and, at the same time, requiring that prices exceed direct costs with revenues outweighing the costs of provisions of that service. Given that central office coin services have not been available to PPOs for use in providing payphone services, coin transmission services should be treated as a new service to prevent incumbent LECs from charging competitors unreasonably high prices for these services.

Paragraph No. 69

Today, the location owner of the premises on which BOC payphones are located would select the presubscribed IXC for those telephones. The FCC explains that while the premises owner selects the OSP for BOC and GTE payphones, all other payphone providers have the option to select the OSP serving their payphones. PPOs and independent LECs offer the location provider a commission on coin and 0+ traffic originating from the payphone, and earn revenue by reselling local and 1+ long distance service and by contracting for 0+ traffic with OSPs that pay commissions on 0+ traffic. The 1996 Act orders the FCC to provide similar rights to BOCs, unless the Commission determines that it is not in the public interest. Comment is sought with respect to the public interest of extending to the BOCs the same rights that all other payphone providers have to select and contract with interLATA carriers that carry interLATA traffic.

The PaPUC agrees that a level playing field should be created within which the BOCs can compete. Providing carrier selection rights to the BOCs should promote parity between BOCs and independent payphone providers. However, the FCC has also recognized as a Section 276 goal that the location provider has the ultimate decision-making authority in determining interLATA services in connection with the choice of payphone providers. Instead of extending to the BOCs carrier-selection rights, the better approach to foster competition and create parity may be to withdraw from the payphone provider the right to select the OSP

serving their payphone. Under this scenario, the location provider would have the right to select the OSP. Potentially, by removing the coin telephone owner from the middle, the OSP may be given an incentive to lower its rates which, in turn, will mean lower rates for the caller or end-user. Furthermore, this would prevent BOCs from directing interLATA service to themselves or giving more favorable interLATA rates to their own payphone operators than to their competitors. To this extent, the BOCs' selection of the presubscribed interLATA carrier would not be in the public interest.

Paragraph No. 75

The FCC recognizes that in some states, like Pennsylvania, competitive payphones are required to route intraLATA 0+ and 0-calls to the incumbent LEC. However, the 1996 Act directs the implementation of regulations to allow PSPs to negotiate with the location provider on selection and contracting with the intraLATA carrier serving the payphone. 47 U.S.C. §276(b)(1)(E). Accordingly, the FCC tentatively concluded that all PSPs should be given this right to negotiate with local providers concerning the intraLATA carrier.

In Pennsylvania, we have a schedule for intraLATA presubscription that applies to all end-users. Therefore, we are not in support of a schedule which will provide this right to presubscribe an intraLATA carrier coin telephone provider in advance of all other telephone customers. While we know that end-users call around the intraLATA carriers by dialing 10XXX and other

means of carrier diversion are being used, we are satisfied to ignore this subterfuge of the network until intraLATA presubscription is applied uniformly across the state.

Paragraph No. 77

The FCC seeks comment on whether it would be in the public interest to maintain payphones provided in the interest of public health, safety, and welfare, as required by Section 276(b)(2), in locations where there would otherwise not be payphones. If public interest payphones are to be maintained, then the FCC is to determine how they should be regulated. The FCC notes that federal regulations could be prescribed or national guidelines established and seeks comment on whether any state programs or initiatives could be used as models. After raising the question of defining "public interest payphone" as payphones in unprofitable locations where public policy objectives call for availability, the Commission recognized that:

A third option for maintaining public interest payphones would be to defer to the states . . . which payphones should be treated as "public interest payphones."

The Commission sought comment on whether the states should be allowed to develop their own guidelines and funding.

The PaPUC supports the public policy initiative of maintaining payphones in locations where there would otherwise not be payphones. Given the contemplated definition of "public interest payphones" as payphones in unprofitable locations, the PaPUC anticipates that these would be rural areas where usage is low. The General Assembly in Pennsylvania had already contemplated this

problem when Sections 2912 and 2913 of the Public Utility Code, 66 Pa. C.S. §§2912 and 2913, were enacted into law on July 10, 1986.

According to Section 2912, all public utilities are required to maintain adequate coin telephone service for emergencies and network access in their service territories. The PaPUC, having the responsibility for enforcing this provision as well as all other provisions of the Public Utility Code, already has the authority for requiring a public utility to maintain a payphone in an unprofitable area. Unfortunately, the problem we experience in Pennsylvania is one of having too many phones, rather than not enough phones. In urban areas, the competitive market has resulted in an overabundant supply of coin telephone stations. In fact, an argument could be made that it would be in the public interest for many of these phones to be removed.⁴ Clearly, in urban areas the coin telephone has been used to facilitate criminal activity like drug dealing and prostitution.

In any event, the PaPUC does agree that it is in the public interest to have "public interest payphones." Based on the current climate with Pennsylvania already having legislation and regulations⁵ in place to assure adequate coin telephone availability, we would support deferring to the states to

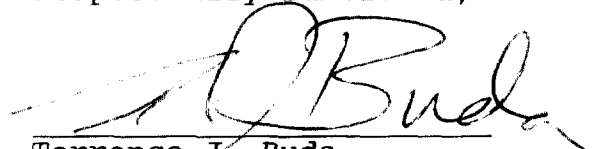
⁴ Having considered the legislative intent to assure adequate coin telephone service throughout the Commonwealth, the PaPUC has not advocated removal of payphones. We believe this is a nuisance issue to be decided at the local level.

⁵ 52 Pa. Code §63.95.

determine, pursuant to their own statutes and regulations, which payphones should be treated as "public interest payphones."

WHEREFORE, the PaPUC respectfully requests that the FCC consider these foregoing comments in promulgating new rules governing the payphone industry.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "T. Buda", is written over a horizontal line.

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